

Constitution of Penington Institute

ACN 140 206 775

Adopted 26 October 2009

Name change to Penington Institute from 31 October 2012

Contents

1. PRELIMINARY	6
1.1 Company limited by guarantee	6
1.2 Replaceable rules.....	6
1.3 Definitions	6
1.4 Interpretation of this document.....	7
2. OBJECTS OF THE COMPANY	8
3. APPLICATION OF INCOME AND PROPERTY	8
3.1 Not for profit	8
3.2 Certain payments allowed.....	8
4. MEMBERSHIP	8
4.1 Membership	8
4.2 Classes of members.....	8
4.3 Director Members.....	9
4.4 Retiring Directors are members	9
4.5 Variation of member classes.....	9
4.6 Admission and transfer of members.....	9
4.7 Limited liability of members.....	9
4.8 Membership Fees.....	9
4.9 Ceasing to be a Member	10
4.10 Resigning as a member	10
4.11 Expelling a member.....	10
5. DIRECTORS	11
5.1 Number of Directors	11
5.2 Eligibility	11
5.3 Appointment by the Board	11
5.4 Election by general meeting.....	11
5.5 Eligible candidates.....	11

5.6	Retirement of Directors.....	12
5.7	Time of retirement	12
5.8	Cessation of Director's appointment.....	12
5.9	Removal from office.....	12
5.10	Too few Directors	12
6.	POWERS OF THE BOARD.....	13
6.1	Powers generally.....	13
6.2	Exercise of powers	13
7.	EXECUTING NEGOTIABLE INSTRUMENTS.....	13
8.	MANAGING DIRECTOR	13
8.1	Appointment and power of Managing Director.....	13
8.2	Retirement and removal of Managing Director	14
8.3	Termination of appointment of Managing Director	14
9.	DELEGATION OF BOARD POWERS	14
9.1	Power to delegate	14
9.2	Power to revoke delegation	14
9.3	Terms of delegation.....	14
9.4	Proceedings of committees.....	14
10.	DIRECTORS' DUTIES AND INTERESTS.....	14
10.1	Compliance with duties under the Act.....	14
10.2	Director can hold other offices etc.....	15
10.3	Disclosure of interests	15
10.4	Director interested in a matter.....	15
10.5	Agreements with third parties.....	15
10.6	Obligation of secrecy	15
11.	DIRECTORS' REMUNERATION	16
11.1	Restrictions on payments to Directors.....	16
11.2	Payments to Directors with Board approval.....	16

12.	OFFICERS' INDEMNITY AND INSURANCE	16
12.1	Indemnity	16
12.2	Insurance	17
12.3	Former officers	17
12.4	Deeds	17
13.	BOARD MEETINGS	17
13.1	Convening Board meetings.....	17
13.2	Notice of Board meeting	17
13.3	Use of technology.....	17
13.4	Chairing Board meetings	18
13.5	Quorum.....	18
13.6	Majority decisions.....	18
13.7	Procedural rules	18
13.8	Written resolution	18
13.9	Additional provisions concerning written resolutions.....	18
13.10	Valid proceedings.....	18
14.	MEETINGS OF MEMBERS	19
14.1	Annual general meeting.....	19
14.2	Calling meetings of members.....	19
14.3	Notice of meeting	19
14.4	Short notice	19
14.5	Postponement or cancellation.....	19
14.6	Fresh notice	20
14.7	Technology.....	20
14.8	Accidental omission.....	20
15.	PROCEEDINGS AT MEETINGS OF MEMBERS	20
15.1	Business of annual general meetings.....	20
15.2	Special business	20
15.3	Member present at meeting	20

15.4	Quorum	20
15.5	Quorum not present.....	20
15.6	Chairing meetings of members	21
15.7	Attendance at general meetings	21
15.8	Adjournment.....	21
15.9	Business at adjourned meetings.....	21
16.	PROXIES, ATTORNEYS AND REPRESENTATIVES	22
16.1	Appointment of proxies.....	22
16.2	Member's attorney.....	22
16.3	Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities	22
16.4	Corporate representatives	22
16.5	Appointment for particular meeting, standing appointment and revocation.....	22
16.6	Suspension of proxy or attorney's powers if member present.....	22
16.7	Priority of conflicting appointments of attorney or representative	23
16.8	More than one current proxy appointments.....	23
16.9	Continuing authority.....	23
17.	VOTES OF MEMBERS	23
17.1	Entitlement to Vote	23
17.2	Casting vote of chairman	24
17.3	No Vote If Membership Fees Unpaid	24
18.	HOW VOTING IS CARRIED OUT.....	24
18.1	Method of voting.....	24
18.2	Demand for a poll	24
18.3	When and how polls must be taken	24
19.	SECRETARY	25
19.1	Appointment of Secretary	25
19.2	Terms and conditions of office	25
19.3	Cessation of Secretary's appointment.....	25
19.4	Removal from office.....	25

20.	MINUTES	25
20.1	Minutes must be kept	25
20.2	Minutes as evidence	26
20.3	Inspection of minute books	26
21.	COMPANY SEALS	26
21.1	Common seal	26
21.2	Use of seals	26
21.3	Fixing seals to documents	26
22.	FINANCIAL REPORTS AND AUDIT	26
22.1	Company must keep financial records	26
22.2	Financial reporting	27
22.3	Audit.....	27
22.4	Conclusive reports.....	27
22.5	Inspection of financial records and books.....	27
23.	REGISTER OF MEMBERS	27
24.	WINDING UP OR LOSS OF TAX STATUS	28
25.	NOTICES	28
25.1	Notices by Company	28
25.2	Overseas members	28
25.3	When notice is given	28
25.4	Business days	29
25.5	Counting days	29
25.6	Notices to "lost" members.....	29

Constitution of Penington Institute (“the Company”)

ACN 140 206 775

Public Company Limited by Guarantee

1. PRELIMINARY

1.1 Company limited by guarantee

The Company is limited by guarantee and the liability of members is limited as provided in this document.

1.2 Replaceable rules

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this document.

1.3 Definitions

The following definitions apply in this document.

Act means the *Corporations Act 2001* (Cth).

Board means the Directors acting collectively under this document.

Company means the company named at the beginning of this document whatever its name is for the time being.

Director means a person who is, for the time being, a director of the Company.

Director Member means a member who is also a Director of the Company.

Friend means a person who is a patron, donor, benefactor or other supporter of the Company and whose name is entered in the records of the Company as a friend.

Managing Director means a managing director appointed under rule 8.1.

Member means a person whose name is entered in the Register as a member of the Company.

Membership Fees means the fees payable by members under rule 4.8.

Needle and Syringe Program means a program identified as such by the Board and under which needles and syringes are supplied for the purpose of reducing harm to users of drugs.

Ordinary Member means a member other than a Director Member.

Ordinary resolution means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

Register means the register of members kept as required by sections 168 and 169 of the Act.

See sections
168 and 169

Schedule of Membership Fees means the schedule of Membership Fees of the Company as determined by the Board under rule 4.8(a).

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

Special resolution has the meaning given by section 9 of the Act.

1.4 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.3) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

2. OBJECTS OF THE COMPANY

The objects of the Company are:

- (a) to promote the approach of harm reduction in issues relating to the use of drugs; and
- (b) to foster, encourage and support Needle and Syringe Programs while ensuring each individual Needle and Syringe Program maintains autonomy.

3. APPLICATION OF INCOME AND PROPERTY

3.1 Not for profit

Subject to rules 3.2 and 11.2, the Company is a not for profit institution and must apply its income solely towards the promotion of the objects of the Company as stated in rule 2. No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to members.

3.2 Certain payments allowed

Rule 3.1 does not prevent the payment of reasonable remuneration to any officer or employee of the Company or to any member of the Company or other person in return for services rendered to the Company. In addition, rule 3.1 does not prevent the Company paying to a member:

- (a) interest on money lent by the member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (b) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business; and
- (c) reasonable rent for premises leased by the member to the Company.

4. MEMBERSHIP

4.1 Membership

The members are:

- (a) the initial members named in the application for the Company's registration who consent to be bound by this Constitution and who are included in the Register in accordance with rule 23; and
- (b) any other person agreeing to be bound by this Constitution whom the Board, in its absolute discretion, admits to membership and who is included in the Register in accordance with rule 23.

4.2 Classes of members

There are two classes of members:

- (a) Director Members; and

- (b) Ordinary Members.

4.3 Director Members

Directors who are also members are members in the class of Director Members.

4.4 Retiring Directors are members

Subject to this Constitution, on a Director ceasing to hold office as a Director, the Director ceases to be a Director Member but remains a member in the class of Ordinary Members.

4.5 Variation of member classes

Subject to this Constitution the Board may:

- (a) establish any new class of members and prescribe the qualifications, rights, restrictions and obligations of members in that class; and
- (b) vary or abrogate the qualifications, rights, restrictions or obligations of members in any new or existing class, with the consent in writing of three quarters of those members, or with the sanction of a special resolution passed at a separate meeting of those members, and the provisions of this Constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every such separate meeting.

4.6 Admission and transfer of members

Subject to this Constitution the Board may:

- (a) admit any person to membership in any class of members; and
- (b) transfer a member, with the member's consent, from membership in one class to membership in another class.

4.7 Limited liability of members

If the Company is wound up each member undertakes to contribute to the assets of the Company up to an amount not exceeding \$1 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after a person ceases to be a member.

4.8 Membership Fees

- (a) The Board shall determine the Schedule of Membership Fees for the Company.
- (b) The Board shall give to each member notice of the Membership Fees due and of any previous Membership Fees overdue by the member.
- (c) A member shall be liable for Membership Fees notwithstanding any failure to give a notice or a true notice.
- (d) Membership Fees shall be paid by the dates set out in the Schedule of Membership Fees as determined by the Board.

- (e) Membership Fees are not payments in advance and shall not by reason of resignation or termination of membership or for any other reason be returned to the member.
- (f) Any member who has any Membership Fees overdue shall not be entitled to exercise any of the rights and privileges of a member of the Company.
- (g) Any member who has any Membership Fees overdue for more than 6 months automatically ceases to be a member of the Company, unless otherwise determined by the Board.
- (h) For the avoidance of doubt, Membership Fees shall not be due from Friends of the Company.

4.9 Ceasing to be a Member

A member ceases to be a member on:

- (a) resignation;
- (b) death;
- (c) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (d) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (e) if a corporation, being dissolved or otherwise ceasing to exist;
- (f) that member's current Membership Fees remaining overdue for payment for a period of 6 months; or
- (g) the Board terminating the person's membership in accordance with rule 4.10.

4.10 Resigning as a member

A member may by notice in writing to the Company resign membership with immediate effect or with effect from a specified date occurring not more than six months after the service of the notice.

4.11 Expelling a member

- (a) The Board may, by resolution, expel from the Company any member:
 - (i) who does not comply with this document or any by-laws, rules or regulations of the Company; or
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company,
 and remove that member's name from the Register.
- (b) At least 21 days before the Board holds a meeting to expel a member, the Board must give a written notice to the member which states:
 - (i) the allegations against the member;

- (ii) the proposed resolution for the member's expulsion; and
 - (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing.
- (c) A member expelled from the Company does not have any claim on the Company, its funds or property.

5. DIRECTORS

5.1 Number of Directors

The Company must have at least three Directors and, until otherwise decided by ordinary resolution, not more than nine Directors.

5.2 Eligibility

A Director need not be a member. Before being appointed as a Director, a person must provide to the Board a signed consent to act as a Director of the Company. Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.

5.3 Appointment by the Board

Replaces
sections 201H

Subject to this Constitution and to the number of Directors for the time being fixed under rule 5.1 not being exceeded, the Board may appoint a person to be a Director at any time except during a general meeting.

5.4 Election by general meeting

Replaces
section 201G

Subject to this document, section 201E and to the number of Directors for the time being fixed under rule 5.1 not being exceeded, the Company may elect Directors by ordinary resolution. A Director appointed to replace one removed from office under rule 5.9 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

5.5 Eligible candidates

The Company in general meeting cannot validly elect a person as a Director unless:

- (a) the person retires under rule 5.6 and seeks re-election;
- (b) the Board recommends the appointment; or
- (c) at least 21 days (or any other period fixed by the Board) before the date of the meeting at which election is to occur, the Company receives both:
 - (i) a nomination of the person by a member (other than the person); and
 - (ii) a consent to act as a Director signed by the person.

The Company must notify members of every candidate for election as a Director at least seven days before the relevant general meeting.

5.6 Retirement of Directors

- (a) A Director (except for a Managing Director) must retire from office at the third annual general meeting after the Director was appointed, elected or last re-elected.
- (b) A Director may elect to retire and seek re-election at an annual general meeting before the time required by rule 5.6(a), provided at least 30 days (or any other period as the Board may determine) before the annual general meeting the Director has given the Board notice of his or her intention to do so. If the Director gives such a notice, the Director must then retire from office at the relevant annual general meeting.
- (c) A Director who retires under this rule 5.6 is eligible for re-election.

5.7 Time of retirement

A Director's retirement under rule 5.6 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

5.8 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend three consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 5.9;
- (g) ceases to be eligible to act as a Director under rule 5.2; or
- (h) is a Managing Director and ceases to hold that office.

Rule 3.9(e)
replaces
section 203A

5.9 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Company by ordinary resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D.

5.10 Too few Directors

If the number of Directors is reduced below the minimum required by rule 5.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and

- (c) in emergencies.

6. POWERS OF THE BOARD

6.1 Powers generally

Replaces
section 198A

Except as otherwise required by the Act, any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

6.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 13; or
- (b) in accordance with a delegation of the power under rule 8 or 9.

7. EXECUTING NEGOTIABLE INSTRUMENTS

Replaces
section 198B

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

8. MANAGING DIRECTOR

8.1 Appointment and power of Managing Director

Replaces
section 198C
and 201J

The Board may appoint one or more persons to be a Managing Director either for a specified term (but not for life) or without specifying a term. Subject to this document, a Managing Director has all the duties, and can exercise all the powers and rights, of a Director.

The Board may delegate any of the powers of the Board to a Managing Director:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board,

and may revoke the delegation at any time.

This rule does not limit rule 9.

8.2 Retirement and removal of Managing Director

A Managing Director is not required to retire under rule 5.6, but (subject to any contract between the Company and that Managing Director) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.

8.3 Termination of appointment of Managing Director

The appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, without affecting the rights of the Managing Director under any contract between the Company and the Managing Director, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

Replaces
section 203F

9. DELEGATION OF BOARD POWERS

9.1 Power to delegate

The Board may delegate any of its powers as permitted by section 198D of the Act.

9.2 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

9.3 Terms of delegation

A delegation of powers under rule 9.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

9.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

10. DIRECTORS' DUTIES AND INTERESTS

10.1 Compliance with duties under the Act

Each Director must comply with his or her duties under the Act and under the general law.

10.2 Director can hold other offices etc

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

10.3 Disclosure of interests

Each Director must comply with the general law in respect of disclosure of conflicts of interest and with section 191 in respect of disclosure of material personal interests.

10.4 Director interested in a matter

Each Director must comply with section 195 of the Act in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
- (b) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, paragraph (c) applies only if it is disclosed before the transaction is entered into.

10.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

10.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;

- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

11. DIRECTORS' REMUNERATION

11.1 Restrictions on payments to Directors

Subject to rule 11.2 and rule 12 the Company must not pay fees or other remuneration to a Director.

11.2 Payments to Directors with Board approval

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any services rendered by the Director to the Company;
- (c) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (f) reasonable rent for premises leased by the Director to the Company.

12. OFFICERS' INDEMNITY AND INSURANCE

12.1 Indemnity

Subject to and so far as permitted by the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or

auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

12.2 Insurance

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

12.3 Former officers

The indemnity in favour of officers under rule 12.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

12.4 Deeds

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 12, enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 12 on any terms and conditions that the Board thinks fit.

13. BOARD MEETINGS

13.1 Convening Board meetings

Replaces
section 248C

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

13.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia.; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

13.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

13.4 Chairing Board meetings

Replaces
section 248E

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairman of Directors or the chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

13.5 Quorum

Replaces
section 248F

Unless the Board decides otherwise, the quorum for a Board meeting is four Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

13.6 Majority decisions

Replaces
section 248G

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. In the event of an equality of votes on any question, the chairman of a Board meeting will have a casting vote.

13.7 Procedural rules

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

13.8 Written resolution

Replaces
section 248A

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

13.9 Additional provisions concerning written resolutions

For the purpose of rule 13.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

13.10 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

14. MEETINGS OF MEMBERS

14.1 Annual general meeting

The Company must hold an annual general meeting as required by section 250N.

14.2 Calling meetings of members

A meeting of members:

Rule 13.2(a)
replaces
section 249C

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

14.3 Notice of meeting

Subject to rule 14.4, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

14.4 Short notice

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

14.5 Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

14.6 Fresh notice

Replaces
section 249M

If a meeting of members is postponed or adjourned for 14 days or more, the Company must give new notice of the resumed meeting.

14.7 Technology

See section
249S

The Company may hold a meeting of members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

14.8 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

15. PROCEEDINGS AT MEETINGS OF MEMBERS

15.1 Business of annual general meetings

The business of an annual general meeting is the consideration of the annual financial report and the reports of the Board and the Auditor, the election of Directors and the transaction of any other business which under the Act or this Constitution ought to be transacted at an annual general meeting.

15.2 Special business

All business other than that referred to in rule 15.1, which is transacted at an annual general meeting and all business transacted at any other general meeting, is special business.

15.3 Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

15.4 Quorum

Replaces
sections 249T(1)
and (2)

The quorum for a meeting of members is 3 members, whether represented by proxy or personally present. Each individual present may only be counted once toward a quorum. If a member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

15.5 Quorum not present

Replaces
sections
249T(3) and (4)

If a quorum is not present within 30 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then,

to the same time on the same day in the next week at the same place;
and

- (ii) if a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members personally present and who are represented by proxy (being not less than five) shall be a quorum.

15.6 Chairing meetings of members

Replaces
sections
249U(1) to (3)

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

15.7 Attendance at general meetings

See section
249V

- (a) Every member has the right to attend and speak at all meetings of members (subject to rule 4.8);
- (b) Every Director has the right to attend and speak at all meetings of members
- (c) Friends have the right to attend meetings of members to which they are invited by the Board, and to speak only where prior approval has been given by the Board or a Director.
- (d) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

15.8 Adjournment

Replaces
section 249U(4)

Subject to rule 14.6, the chairman of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

15.9 Business at adjourned meetings

Replaces
section
249W(2)

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

16. PROXIES, ATTORNEYS AND REPRESENTATIVES

16.1 Appointment of proxies

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company:

See section
249X

- (a) that complies with section 250A(1) of the Act; or
- (b) in any other form and mode that is, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board.

16.2 Member's attorney

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

16.3 Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

16.4 Corporate representatives

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

16.5 Appointment for particular meeting, standing appointment and revocation

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

16.6 Suspension of proxy or attorney's powers if member present

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

16.7 Priority of conflicting appointments of attorney or representative

If more than one attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 16.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

16.8 More than one current proxy appointments

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than one proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

16.9 Continuing authority

Replaces
section 250C(2)

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

17. VOTES OF MEMBERS

17.1 Entitlement to Vote

At a general meeting:

- (a) on any resolution which proposes to:
 - (i) vary or abrogate the rights of a class of members;
 - (ii) change the Company name; or
 - (iii) change the Company type,

each member present in person or by proxy, attorney or corporate representative is entitled to vote and has one vote; and

Replaces
section 250E(2)

- (b) on any other resolution or motion, only each Director Member present in person or by proxy or attorney is entitled to vote and has one vote.

17.2 Casting vote of chairman

Replaces section
250E(3)

If an equal number of votes is cast for and against a resolution at a meeting of members, the chairman has a casting vote whether or not the chairman is a member.

17.3 No Vote If Membership Fees Unpaid

A member shall not be entitled to attend, speak or vote at any meeting of members if any of the member's Membership Fees are overdue at the date of the meeting.

18. HOW VOTING IS CARRIED OUT

18.1 Method of voting

Replaces
sections
250J(1) and (2)

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 18.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands and an entry to that effect in the minutes of the meeting is final and evidence of the fact, without proof of the member or proportion of votes recorded in favour of, or against that resolution.

18.2 Demand for a poll

See section
250L

A poll may be demanded on any resolution (except a resolution concerning the election of the chairman of a meeting) by:

- (a) at least three members entitled to vote on the resolution; or
(b) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

18.3 When and how polls must be taken

Replaces
section 250M

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 18.3(c), in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 18.3(c), in the manner that the chairman of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

19. SECRETARY

19.1 Appointment of Secretary

See section
204D

The Board:

- (a) must appoint at least one individual; and
- (b) may appoint more than one individual,

to be a Secretary either for a specified term or without specifying a term.

19.2 Terms and conditions of office

Replaces
section 204F

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

19.3 Cessation of Secretary's appointment

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 19.4.

19.4 Removal from office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

20. MINUTES

20.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 9);
- (d) resolutions passed by Directors without a meeting; and

- (e) disclosures and notices of Directors' interests,
to be kept in accordance with sections 191, 192 and 251A.

20.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

20.3 Inspection of minute books

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

21. COMPANY SEALS

21.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

21.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

21.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by two Directors;
- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

22. FINANCIAL REPORTS AND AUDIT

22.1 Company must keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

22.2 Financial reporting

The Board must cause the Company to prepare a financial report and a directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 no later than the deadline set by section 315 of the Act.

22.3 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

22.4 Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within three months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

22.5 Inspection of financial records and books

Replaces
section 247D

Subject to rule 20.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

23. REGISTER OF MEMBERS

The Company must set up and maintain a register of members.

In accordance with section 169, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the class of members to which the member belonged upon entry into the Register, and any changes to this class of membership;
- (d) the name and details of each person who stopped being a member within the last seven years;
- (e) the date on which the person stopped being a member; and
- (f) an index of members' names if the Company has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

24. WINDING UP OR LOSS OF TAX STATUS

In the event of the winding up or dissolution of the Company or the loss by the Company of its endorsement by the Australian Taxation Office as a deductible gift recipient, any surplus assets remaining after satisfaction of all the Company's debts and liabilities shall not be paid to or distributed amongst the members of the Company, but shall be paid or transferred to another institution in Australia with similar charitable objects to those of the Company and which:

- (a) is endorsed as a deductible gift recipient by the Australian Taxation Office; and
- (b) is prohibited by its constituent documents from distributing its income and property amongst its members,

such institution to be determined by the members of the Company, or failing such determination, by a judge of the Supreme Court of Victoria or such other court as may have or acquire jurisdiction in the matter.

25. NOTICES

25.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

25.2 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

25.3 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
 - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;

25.4 Business days

For the purposes of rule 25.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

25.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

25.6 Notices to "lost" members

If:

- (a) on two or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Company under rule 25.2,

the Company may give effective notice to that member by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the member gives the Company notice of a new address.